

Explanatory Memorandum to the Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2013

This Explanatory Memorandum has been prepared by the Department for Local Government and Communities and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2013.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant
Minister for Local Government and Communities
27 February 2013

1. Description

These Regulations will amend the Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000 (Statutory Instrument 2000 No. 1786 (W.123)) (“the 2000 Regulations”). The Regulations add new eligibility criteria to the Blue Badge Scheme and make amendment to the Schedule to the regulations which sets out the technical requirements for the photograph that must be issued as part of the badge.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

The Regulations are made under section 21 of the Chronically Sick and Disabled Persons Act 1970 (“the CSDPA”) and are subject to annulment by the National Assembly for Wales (the negative procedure). The powers to make the regulations they were transferred from the Secretary of State to the National Assembly for Wales via the 1999 Transfer of Functions Order and then subsequently to the Welsh Ministers via Schedule 11 to the Government of Wales Act 2006.

The Regulations will come into force on 8 April 2013.

4. Purpose and intended effect of the legislation

These Regulations will introduce changes to the disabled persons Blue Badge Scheme in Wales in the following areas:-

- a. amendments to the eligibility criteria for the Blue Badge Scheme; and
- b. an amendment to the technical specification for the photograph on the badge.

Eligibility

Under current arrangements a Blue Badge can be issued, without the need for further assessment, to people receiving the Higher Rate Mobility Component of Disability Living Allowance (HRMCDLA). It is estimated that in Wales, around 90,000 badges (40% of badge holders) are issued without the need for further assessment. The majority of these badge holders receive HRMCDLA.

The UK Government is undertaking an extensive reform programme for all welfare benefits. The reform programme includes proposals to introduce Personal Independence Payment (PIP) from April 2013 to replace Disability Living Allowance (DLA) for eligible working age claimants aged 16 to 64 years old although this change will take place over a number of years.

PIP will be awarded to applicants following an assessment of their ability to undertake daily living and/or mobility activities. This includes two measures of mobility. The assessment which will determine the ability of the person to:

- plan and follow a journey (Mobility Activity 1), and
- move around (Mobility Activity 2).

Applicants who receive the mobility component of PIP will be awarded an enhanced or standard rate of that component.

The Department of Work and Pensions (DWP) intend to assess an estimated 75% of PIP applications through face-to-face interviews and these will take place through home visits and at assessment centres. They have awarded the contract for undertaking the PIP assessments, and providing advice to DWP, to Capita and Atos. It is estimated that the number of people in the UK who will receive the enhanced rate of PIP in 2015/16 will be approximately 760,000 people compared to over one million people who were predicted to receive HRMCDLA had DLA not been reformed.¹

The assessment of the ability of the person to plan and follow journeys will identify people with sensory and/or cognitive impairments. Some of these people will have severe sight impairments and will be eligible for a Blue Badge without the need for further assessment as is the case now. However, it will also include people with certain cognitive impairments who currently do not meet the eligibility criteria for a badge.

One of the priorities in the Welsh Government's Action Plan for Modernising the Blue Badge Scheme is to extend eligibility for a Blue Badge to people with cognitive impairments.

Making regulations that will link eligibility for a badge to the enhanced rate awarded under Mobility Activity 1 of PIP without the need for further assessment will help the Welsh Government deliver the priorities in the Action Plan. It will also make efficient use of the PIP assessment process and the skills of the professionals undertaking them.

It will avoid the need for local authorities to make additional resources available to carry out further assessments and make it easier for people who are awarded the enhanced rate under Mobility Activity 1 to receive a Blue Badge.

¹ Personal Independence Payment: assessment thresholds and consultation, Department of Work and Pensions, January 2012

For the same reasons, we also plan to extend eligibility for a badge without the need for further assessment to people who receive a standard or enhanced award under Mobility Activity 2 i.e. people who can walk no more than 50 metres unaided.

In the case of people who were issued with a Blue Badge because they were in receipt of HRMCDLA but are then assessed for PIP so no longer receive HRMCDLA, regulations will mean they can retain their badge until it expires. The Regulations will also allow a replacement badge to be issued in the case of lost or stolen badges for this group of people. The expiry date for the replacement badge will be the same as the original badge.

When the badge expires they may apply for a new badge either because they receive the relevant PIP payment or under the discretionary criteria which will need to be assessed by the local authority on a case by case basis.

Amendment to photograph specification

When the Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2012 came into force they made amendments to the Schedule to the 2000 Regulations, introducing detailed technical requirements for the photograph of the badge holder that appears on the face of the badge.

It has become apparent that people with certain impairments are unable to adhere to the detailed technical requirements, for example persons who are unable to open their eyes, and so these requirements may be seen as discriminatory. The planned changes to the Schedule to the Regulations will allow those persons who, by reason of their disability, are unable to satisfy the photographic requirements to obtain a badge, provided that any application is accompanied by a written statement explaining the reasons why the photograph does not meet all the usual requirements.

5. Consultation

A public consultation on these proposals began on 7th August 2012 and ended on 30 October 2012. 72 responses were received from a variety of stakeholders and were taken into account when formulating these Regulations. Details of the consultation exercise together with the Welsh Government's response are included in the Regulatory Impact Assessment set out below.

PART 2 – REGULATORY IMPACT ASSESSMENT

The *Modern Blue Badge Scheme for Wales: Action Plan for key stakeholders* was published in January 2010 (“the Action Plan”). These Regulations will help to deliver the Welsh Government priorities to:-

- a. improve the administration of the Scheme, and
- b. extend the Scheme to people with certain cognitive impairments.

Options considered for implementation;

Option 1 - Do nothing

Option 2 – make Regulations to bring forward the proposals

Automatic eligibility criteria for the Blue Badge Scheme

Option 1 – Do Nothing

Currently people who receive the Higher Rate Mobility Component of Disability Living Allowance (HRMCDLA) are eligible for a Blue Badge without the need for further assessment (i.e. automatically). The UK Government is undertaking an extensive reform programme for all welfare benefits. The reform programme includes proposals to introduce Personal Independence Payment (PIP) to replace Disability Living Allowance (DLA) for eligible working age claimants aged 16 to 64 years old. This process will begin in April 2013 for all new claimants. Additionally those currently in receipt of DLA will be assessed for PIP over a phased programme that is scheduled to be completed by 2017/18. HRMCDLA will eventually only be awarded to children under the age of 16 and ‘legacy’ cases for people who were aged 65 or over on 8 April 2013.

This means that people between the ages of 16-64 will no longer receive HRMCDLA. If we do not make the changes planned, people who are awarded PIP would not be able to apply for a Blue Badge automatically and would have to go through a further assessment. This would add additional costs for both the local authority and the applicant.

Costs and Benefits

Applicants are likely to face additional transportation costs for attending a further assessment. In addition, they may be faced with the cost of paying for a report from the GP or other health professional. (The average cost of a report from a GP is around £27). Taken together, these costs are likely to be in excess of £2m over 3 years.

Seeking further evidence to support badge applications will also require additional staff resources in local authorities and take more time to process leading to delays. Anecdotal evidence suggests that in some cases it has taken several months to obtain reports from GPs. This may delay the issue of Blue Badges to the most vulnerable people who meet the eligibility criteria and this will have an adverse impact on their ability to access services and live independent lives.

Option 2 – Make Regulations to link eligibility for a Blue Badge to PIP without the need for further assessment

The proposed Regulations will provide people who receive PIP under Mobility Activity 1 category F (i.e. 12 points), or Mobility Activity 2 categories C, D, E, or F (i.e. a score of 8 points and above) automatic eligibility for a Blue Badge and avoid the need for further assessment. These proposals will ensure that people who are awarded PIP will receive, as far as possible, the same benefits enjoyed by people who are awarded HRMCDLA under the current arrangements. It will also help to deliver the Welsh Government's priority for extending the Blue Badge scheme to people with certain cognitive impairments.

Applicants for a Blue Badge who receive PIP under these categories will be issued with a badge when they provide evidence of the receipt of the benefit. The evidence will be in the form of the notification letter issued by DWP to claimants detailing the benefits being awarded. This will help local authorities by reducing the time to process applications.

The Regulations will also allow people who applied and were issued with a badge because they received HRMCDLA to retain and continue to use the badge until it expires even if they no longer receive HRMCDLA. This will remove any uncertainty for both badge holders and enforcement officers. Further it will not add extra burdens on local authorities who would otherwise have to recover badges in these circumstances.

Costs and Benefits

There will be no additional costs for applicants or local authorities stemming from these proposals. The costs for printing and issuing the Blue Badge is £4.85 plus VAT and this will continue to be funded by the Welsh Government in the usual way.

DWP have provided statistical projections on the number of people who will be assessed as meeting the thresholds for standard and enhanced payments of PIP for the mobility activities. On the basis of the information provided by DWP it is anticipated that around 60,000 people in Wales are likely to be awarded PIP and meet the eligibility criteria for a Blue Badge without the need for further assessment. (This compares to around 78,000 people who currently receive HRMCDLA).

There will be a cost to Welsh Government to enable applications for a Blue Badge to be processed through the Blue Badge Improvement Service (BBIS). BBIS is a UK wide service to ensure the secure production of the new badge design and provision of a UK wide data base of Blue Badge holders. The database includes details of the eligibility criteria that the badge had been issued under. It is estimated that changes to BBIS will cost up to £22,000 and this can be met from current LGC budgets.

Blue Badge photograph specification

Option 1 – Do Nothing

When the Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2012 came into force they made amendments to the Schedule to the 2000 Regulations, introducing detailed technical specifications for the photograph of the badge holder that appears on the face of the badge. The specifications are detailed and include such requirements as 'with a neutral expression and mouth closed; and with eyes open and clearly visible'.

It has been identified that some people with impairments are unable to adhere to these specifications which means the specifications could be considered discriminatory.

Costs and Benefits

Leaving these Regulations un-amended would have an indirect affect on those people with impairments who are unable to comply with the requirements. It is unlikely that a local authority would not accept the photograph and refuse to issue a Blue Badge if the applicant met the eligibility criteria. However, there is an issue of equality, dignity and respect for the individual that should be acknowledged in these cases. This is likely to affect only a minority of the 230,000 Blue Badge holders in Wales.

Welsh Government could issue guidance to ensure that people who meet the eligibility criteria for a Blue Badge are not refused a badge because of difficulties with the photograph specifications. This would have minimal associated costs as the guidance would be issued electronically.

Option 2 – Make regulations to amend photograph specifications

Amend the Regulations to relax the requirements for persons who, by reason of their disability, are unable to meet those requirements. This will allow local authorities to judge the suitability of the photograph on a case by case basis.

Costs and Benefits

This will not have any associated costs but will meet equality requirements so that everyone despite their impairment will be able to meet the specifications for a photograph for the Blue Badge.

The proposals set out in the Regulations have no impact on the voluntary and business sectors. They will reduce costs for local authorities and make it easier for them to administer the Blue Badge scheme.

An Equality Impact Assessment has been completed as part of plans for modernising the Blue Badge scheme and this has been refreshed to take account of the impact of these proposals on people with protected characteristics. The Assessment will continue to be refreshed as other changes to the scheme are made in the future.

The Blue Badge Scheme in Wales: Changes to the Automatic Eligibility Criteria

Summary of Consultation Responses

Background

The Blue Badge Disabled Parking Scheme enables disabled people to access services and facilities through a range of parking concessions.

Research² gathered by the Welsh Government has provided strong evidence in support of the case for extending eligibility for a Blue Badge to people with the most severe cognitive impairments to help improve personal mobility and independent living.

At present, the Higher Rate Mobility Component of Disability Living Allowance (HRMCDLA) is awarded to people who are assessed as having considerable difficulty in moving around. Receipt of the HRMCDLA is one of the automatic eligibility criteria for a Blue Badge in Wales, i.e. the receipt of HRMCDLA provides a passport for a Blue Badge.

The UK Government is undertaking an extensive Welfare Reform Programme. This programme will replace Disability Living Allowance (DLA) with Personal Independence Payment (PIP) for people aged 16 to 64. The changes will be phased, starting with new claims in a limited area from April 2013 before extending to new claims nationally from June 2013. Reassessment of current DLA Recipients will also be phased in starting from October 2013.

PIP will include assessment of the physical ability of a person to move around under the 'Moving around' activity. The ability which this activity assesses is similar to the current criteria for the award of HRMCDLA and the criteria that local authorities use for a discretionary award of a Blue Badge.

The PIP mobility component can also be awarded on the basis of an assessment of the cognitive and sensory ability to plan and undertake journeys.

In response to the planned changes to the Welfare Benefits System, the Welsh Government has looked at how automatic eligibility for a Blue Badge can be linked to the award of the new PIP.

A consultation paper was published on 7 August 2012 and set out proposals for linking automatic eligibility for a Blue Badge to either:

- individuals who receive 12 points for 'Planning and following a journey' or
- individuals who receive 8 points or more for 'Moving around'.

² Extending Eligibility Criteria for a Blue Badge to People with Cognitive Impairments: Final Report 2012

Summary of Responses

The consultation period expired on 30 October 2012. **72** written responses were received from local authorities, health services, representative organisations, interest groups and members of the public.

Some of the comments we received fell outside the scope of the consultation exercise or raised issues that are matters for the UK Government to consider as part of the review of the Benefits System and are not devolved to Welsh Government.

This summary focuses on the comments received in response to those matters that fall for consideration by the Welsh Government as part of the plans for taking forward the Blue Badge Action Plan.

Overall, there was strong support for the proposals set out in the consultation paper and our responses to the detailed comments received are set out below.

QUESTION 1: Do you agree that the award of the Higher Rate Mobility Component of Disability Living Allowance (HRMCDLA) should continue to be linked to automatic eligibility for a Blue Badge?

Yes	61	85%
No	9	13%
No view	2	3%

There was overwhelming support for the proposal to retain the automatic link between the award of HRMCDLA and eligibility for a Blue Badge. This means that people who are awarded the HRMCDLA will continue to enjoy automatic eligibility for a Blue Badge.

The main comments received were around the duplication of assessments that applicants would need to undertake if there was no link to automatic eligibility for a Blue Badge. Applicants and badge holders are becoming frustrated by the increasing use of assessments and repeated calls for information already supplied. One response commented that “this is both stressful to the person and their carer, it results in some people not applying for benefits and support that they are entitled to, and it makes people feel as if their word cannot be trusted.”

Some concerns were also raised about the award of HRMCDLA being discriminatory particularly to those who develop a mobility need after the age of 65.

The Welsh Government’s Response

We plan to retain the current eligibility criteria for a Blue Badge and this includes the automatic link between the award of HRMCDLA and the eligibility

criteria for a Blue Badge. This includes the link from HRMCDLA which will help benefit recipients during the transition phase of the Welfare Reform Programme, children under 16 who will not be moved to PIP and DLA legacy cases for those over the age of 65.

The automatic link between the award of HRMCDLA and Blue Badge reduces the need for further assessment and cuts down on paperwork, time and costs, which impacts on both local authorities and applicants.

Applicants will still be able to apply under the discretionary criteria where they are unable to claim HRMCDLA or the mobility component of PIP due to their age.

QUESTION 2: Do you agree that the award of Personal Independence Payment (PIP) should be linked to automatic eligibility for a Blue Badge?

Yes	58	81%
No	8	11%
No view	6	8%

Again there was very strong support for this proposal.

The main concern raised in response to the consultation was that PIP is being targeted under much stricter criteria with higher thresholds set for both the standard and enhanced rates in the future. There is no guarantee that those currently on HRMCDLA will necessarily get the enhanced rate of PIP. This will inevitably mean that more people will be awarded the standard rate and would no longer be eligible for a Blue Badge under the automatic criteria.

One respondent raised concerns that the eligibility criteria for PIP have not been finalised and it is not possible to determine the number of people who may be entitled to the mobility components of PIP. It was suggested that no decision should be made on which threshold to use until the PIP criteria are finalised. It was also argued that the level of disability needed to meet the criteria for the award of HRMCDLA is lower than that used in local authority discretionary assessments for a Blue Badge.

Some of the responses also expressed concerns that people with sensory impairments, who are currently eligible for a Blue Badge, should not be disadvantaged by the transition to PIP.

Concerns were flagged up that there could be many appeals as current Blue Badge holders may become ineligible for PIP under the new rules and therefore clarification is required in circumstances where applicants are appealing against their PIP award decisions.

One response considered it important for local authority staff to receive Disability Equality Training, and it would be best practice for this to be provided by a disabled person. There should be greater consistency within each local authority as there is likely to be a rise in discretionary assessments which would put more pressure on local authorities and be more stressful for the applicant.

The Welsh Government's Response

The proposals set out in the consultation paper will link automatic eligibility to certain criteria for PIP. The Department for Work and Pensions has now agreed the PIP descriptors and these have informed our plans for extending eligibility. Our plans will help to minimise the adverse impact of the changes to the Benefits System on people who are most in need in Wales.

The Welsh Government also has no plans to change the Blue Badge eligibility criteria for people with sensory impairments

The Welsh Government is preparing comprehensive guidance to local authorities and this will include advice on training.

QUESTION 3: Do you agree that these Personal Independence Payment (PIP) descriptor levels should be linked to automatic eligibility for a Blue Badge?

Yes	32	44%
No	5	7%
No view	35	49%

Many of the responses received noted they did not understand the very complex PIP rules and could not answer the question.

The majority of the responses that answered the question supported the plans to link automatic eligibility for a Blue Badge to PIP payments awarded under either:

- individuals who receive 12 points for 'Planning and following a journey' or
- individuals who receive 8 or more points for 'Moving around'.

Some of the responses suggested that automatic eligibility should be extended to people who are awarded the standard rate of mobility for planning and following a journey whilst others argued that there should be no link with this activity.

In other responses there was concern about putting in place arrangements to allow people who are not eligible for PIP because of age to apply for a badge in an equitable way so that it is targeted to people with protected characteristics who are most in need. Responses wanted to see more robust assessment arrangements put in place to maintain the integrity of the scheme. There was concern that extending eligibility would make the scheme unmanageable and dilute the benefits associated with using a Blue Badge.

It was suggested that where PIP is not awarded to an individual, they should be made aware of other benefits available to them and the fact that they may still become eligible for a Blue Badge under the discretionary criteria.

The Welsh Government's Response

The Welsh Government believe that the proposals provide a balanced approach to including people with physical, sensory and physical impairments who have restricted mobility.

The PIP descriptors awarded 8-12 points for the moving around activity best matches the current eligibility criteria for a Blue Badge and will ensure that the status quo is maintained.

The PIP descriptor awarded 12 points for planning and following a journey activity targets those with the greatest need who may not have a mobility impairment but who require guidance and/or supervision to ensure their safety.

Welsh Government are aware that extending the Blue Badge scheme to those who need supervision and guidance in order to undertake journeys will be limited to those of working age who are able to apply for PIP. Consequently further work is being undertaken to establish how to assess the award of a Blue Badge to people with cognitive impairments who are unable to claim PIP because of age.

QUESTION 4: Do you agree that the award letter for Personal Independence Payment (PIP) or the annual uprating letter will provide adequate evidence to support a Blue Badge application under the proposed automatic eligibility?

Yes	50	69%
No	11	15%
No view	11	15%

The majority of respondents who agreed with this proposal indicated that the PIP award letter would be sufficient, given the strict thresholds and regular reassessment within the PIP awards, to prove eligibility for a Blue Badge. Others indicated that it is imperative for local authorities to have access to clear information regarding awards to be able to process automatic eligibility without placing undue burdens on them, and that further proof of identity would be required.

The Welsh Government's Response

The Welsh Government is working with DWP to ensure that the award letter will provide comprehensive information and practical evidence to support an application to the Blue Badge Scheme.

QUESTION 5: Do you agree that people who hold a Blue Badge because they are currently awarded Higher Rate Mobility Component of Disability Living Allowance (HRMCDLA) can continue to keep the badge until it expires, even if they do not receive an award following an assessment for PIP?

Yes	57	79%
No	11	15%
No view	4	6%

There was strong support for this proposal, i.e. that if a current badge holder becomes ineligible because of their PIP assessment and award, that they should retain their current badge until the date of expiry.

The Welsh Government's Response

The Welsh Government will not seek to recover Blue Badges from those who currently hold them, if they no longer receive HRMCDLA or qualify for PIP. In such circumstances the badge holder will be able to retain the badge until it expires. They will then be able to apply for a new badge under the discretionary eligibility criteria in the usual way. It will be for local authorities to determine eligibility on a case by case basis.

QUESTION 6: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them

Temporary badges

Some responses suggested that Blue Badges should be issued on a temporary basis or alternatively for life in the case of degenerative or terminal conditions. Others indicated that three years is the correct time-period for a Blue Badge before a reapplication and reassessment should be required.

Parking and Enforcement

Respondents noted a number of issues;

- Blue Badge parking charges should be consistent to avoid confusion and parking fines.
- There should be more enforcement officers patrolling disabled parking spaces, including supermarket car parks.
- Fines for misuse of disabled parking spaces should be increased to levels where fines are a deterrent.
- Public awareness campaigns are needed to highlight the consequences of abuse on badge holders.

- Parking provision should be reviewed in line with the number of badge holders.
- A hotline was necessary to report abuse.

Eligibility

One respondent felt that wheelchair users are more deserving of a badge and that all other applicants 'claiming they cannot walk' should be medically examined, rather than being passported by benefits.

On the other hand, it was noted that eligibility should be on the basis of need and should therefore include those with severe cognitive impairments and older people who have difficulty walking. One response felt that Blue Badge should not just be awarded for the inability to walk, as carers may find that wider bays are easier to assist their dependants out of the car.

The Welsh Government's Response

The Welsh Government will take into consideration these comments as we take forward the other priorities in the Action Plan.
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